## **SETTLEMENT AGREEMENT**

This Agreement is made and entered into this <u>M</u> day of <u>Jul</u> 2010, by and between the City of St. Paul ("City"), and Comcast of Minnesota / Wisconsin, Inc. (herein referred to as "Comcast").

- 1.0 <u>Recitals</u>. This Agreement is made expressly with reference to the following agreed facts, among others:
- 1.1 At all times relevant to this Agreement, Comcast operated a cable system under the terms and conditions of Franchise granted by the City.
- 1.2 The City is vested by law with the authority to collect Franchise fees for the use of the public right of way.
- 1.3 The City, pursuant to its Franchise authority, engaged the firm of Lewis & Associates (hereinafter "Lewis") to, among other tasks, conduct an audit of Comcast's payment of Franchise fees for the period January 1, 2005 through December 31, 2007 (the "Review Period").
- 1.4. Lewis performed the audit and submitted its findings and conclusions in a Report dated June 8, 2009 (hereinafter, the "Report").
- 1.5. Lewis concluded in its Report that Comcast had underpaid certain Franchise fees, a conclusion with which Comcast disagreed in certain material respects.
- 1.6 The parties have reached an agreement to resolve these matters without resort to judicial or administrative proceedings, which settlement this Agreement is intended to document and conclude.

NOW, THEREFORE, Comcast and the City, in consideration of the promises contained herein and subject to the terms and conditions set forth below, agree as follows:

- 2.0 Compromise and Release. This Settlement Agreement is entered into in compromise of disputed claims and rights. Specifically, the City and Comcast desire to compromise, settle and discharge all disputes, claims, demands, actions or causes of action whatsoever of every kind and nature that pertain to, or arise out of, the Franchise fee audit for the Review Period and the associated findings and conclusions contained within the Lewis Report. In addition, the City and Comcast desire to compromise, settle and discharge all disputes, claims, demands, actions or causes of action whatsoever of every kind and nature that pertain to the underpayment of Franchise fees for the period from January 1, 2005 through December 31, 2007. Each party, therefore, hereby forever discharges and mutually releases the other party, including the other party's agents, employees, officers, and assigns of and from any and all claims, demands, rights, liability, suits, debts, liens, actions and causes of action, of every kind and nature whatsoever, at law or in equity, known and unknown, suspected and unsuspected, disclosed and undisclosed which the releasing party ever had, now has or hereafter may have by reason or any act, omission, matter, cause or thing, arising out of the payment, nonpayment, underpayment, or overpayment of Franchise fees for the Review Period. It is understood and agreed that this is a compromise of disputed claims and shall not be construed as an admission of any liability of either releasing party to the other nor shall it establish a precedent for how either party may proceed with regard to Franchise fees due to the City for timeframes after December 31, 2007.
- 3.0 Payment to the City. In full settlement of all claims arising from those alleged violations described in the preceding paragraph, Comcast agrees to pay the City the sum of FORTY SIX THOUSAND THREE HUNDRED EIGHTY TWO DOLLARS AND NO CENTS (\$46,382.00), which amount is due and payable within thirty (30) days of final execution of this Agreement. This amount is understood and agreed to represent a compromise of disputed claims over Franchise fees and shall not be construed as an admission of any liability. As this payment

arises out of an audit of Franchise fees, Comcast may recover all or portions of the payment from subscribers in any manner authorized by applicable law.

- 4.0 <u>Claims Relinquished</u>. As further consideration for the payment identified in Paragraph 3.0 above, the City relinquishes any additional claims for underpayment of Franchise fees prior to January 1, 2008.
- 5.0 <u>Attorney's and Consultants' Fees and Costs</u>. Comcast and the City shall each bear their own attorneys' and consultants' fees and costs.
- 6.0 Explained by Counsel and No Coercion. Comcast and the City each acknowledge, covenant, and warrant that the contents of this Agreement have been explained to each of them by their counsel, that they are each free from any duress or coercion, economic or otherwise in connection with this matter, and that this Agreement is executed voluntarily and with full knowledge of its significance.
- 7.0 Entire Agreement. This Agreement constitutes the entire agreement among the parties regarding the subject matter of this Agreement. No statements, promises, or inducements inconsistent with this Agreement made by any party shall be valid or binding, unless in writing and executed by all parties. This Agreement may only be modified by written amendments hereto signed by both parties.
- 8.0 <u>Governing Law</u>. This Agreement shall be interpreted, governed by, and construed under the laws of the State of Minnesota. Jurisdiction of any disputes hereunder shall be had in Hennepin County.
- 9.0 <u>Construction of Agreement</u>. This Agreement is the product of negotiation and preparation by and among parties represented by counsel. Both sides and their counsel have reviewed and have had the opportunity to revise this Agreement. The parties warrant and agree that the language of this Agreement shall neither be construed for nor against any party hereto.

10.0 <u>Modification</u>. No modification or change to this Agreement shall be binding or effective unless executed in writing by both sides. No oral statement shall in any manner modify

or affect the terms and conditions set forth herein.

11.0 Nonwaiver. The waiver by either party of any breach of any term, covenant or

condition contained in this Agreement, or any default in the performance of any obligation under

this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or

any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach

or default constitute a continuing waiver of the same.

12.0 Counterparts. This Agreement may be executed in one or more counterparts, each

of which shall be deemed an original, but all of which together shall constitute one and the same

instrument.

13.0 Authorization. Each person executing this Agreement warrants to the other party

that he or she is fully authorized to enter into this Agreement in the capacity indicated by his or

her signature.

	Comcast of Minnesota / Wisconsin, Inc.
Dated:	By:
	Title:
	The City of St. Paul  By: Mily Oce Or
	Title: CABLE COMMUNICATIONS OFFICER